

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

DAVID THOMAS, JR.,
Plaintiff,

v.

C. ZAKHORIA, *et al.*,
Defendants.

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CIVIL ACTION H-07-3251

AMENDED ORDER

Pending before the court is the defendants' motion for reconsideration and further ruling. Dkt. 50. Upon consideration of the motion, the response, and the summary judgment record, the motion is GRANTED. The court incorporates in its entirety its order of November 16, 2009 denying summary judgment on the excessive force claims against officers Chapnick, Rozek, and Zakhoria. Dkt. 49. In that order, the court did not address all of the claims on which the defendants sought summary judgment. Therefore, the court now addresses them.

In his first amended complaint, the plaintiff brings causes of action against the three officers named above, officers J. Chase and Daniel Garza, unidentified John Doe officers, and the City of Houston. Dkt. 22. He alleges generally against all defendants (1) a claim under 42 U.S.C. § 1983 for violation of the Fourth and Fifth Amendments to the United States Constitution—specifically use of excessive force against him during arrest, (2) a claim under 42 U.S.C. § 1985¹ for conspiracy to violate his rights under the United States Constitution, (3) a violation of his right against unreasonable search and seizure secured to him through the Bill of Rights to the Texas Constitution, (4) common law assault and battery, and (5) common law intentional infliction of emotional distress and mental anguish. Dkt. 22. In their motion for summary judgment, the defendants moved for summary judgment as to all claims. Dkt. 35. In his response to the defendants' motion for summary judgment, the plaintiff expressly abandoned his claims against all defendants except officers

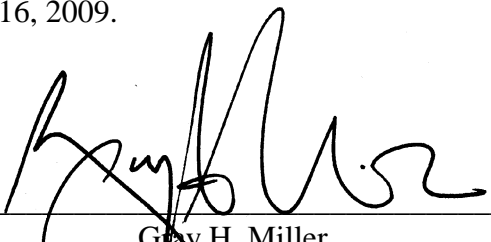
¹ The plaintiff says § 1983 in his complaint. However, the court reads it as a claim under § 1985.

Chapnick, Rozek, and Zakhoria. Dkt. 44, n. 1. Therefore, summary judgment for defendant officers Chase, Garza, the City of Houston, and unidentified John Doe officers is GRANTED, and the plaintiff's claims against them are DISMISSED with prejudice.

Additionally, in their motion for summary judgment, the defendants argued that plaintiff had no evidence to show the existence of a conspiracy under § 1985, or the alleged violations of Texas constitutional and common law.² The plaintiff failed to address these deficiencies in either his response to the defendants' motion for summary judgment, or his response to the defendants' motion for reconsideration. Since, he would bear the burden at trial on these issues, he bore the burden here to demonstrate that genuine issues of material fact existed as to these claims. *Transamerica Ins. Co. v. Avenell*, 66 F.3d 715, 718–19 (5th Cir. 1995). Accordingly, summary judgment is appropriate on his remaining causes of action against officers Chapnick, Rozek, and Zakhoria. Therefore, the defendants' motion for summary judgment on plaintiff's claims of conspiracy under § 1985, violations of the Texas Constitution, assault and battery, and intentional infliction of emotional distress and mental anguish is GRANTED, and those claims are DISMISSED with prejudice.

It is so ORDERED.

Signed at Houston, Texas on December 16, 2009.



Gray H. Miller
United States District Judge

TO ENSURE PROPER NOTICE, EACH PARTY RECEIVING THIS ORDER SHALL
FORWARD IT TO EVERY OTHER PARTY AND AFFECTED NONPARTY

² Additionally, the defendant argued that the plaintiff had not complied with the notice requirements that are the necessary predicate to bringing his state law claims against the City and the named officers.